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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 223

SAMUEL JOSEPH RUGENDORF, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 21, 1963

CERTIORARI GRANTED OCTOBER 24, 1963

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In the

United States Court of Appeals

For the Seventh Circuit

No. 13967

UNITED STATES OF AMERICA, *Appellee,* vs. SAMUEL JOSEPH RUGENDORF, *Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. Honorable J. Sam Perry, Judge Presiding.

Appendix for Appellant

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Appellant's Appendix

1-2 Prefix to Record.

3-4 Indictment as follows:

The April 1962 Grand Jury charges:

That on or about March 22, 1962 at Chicago, Illinois, in the Northern District of Illinois, Eastern Division,

SAMUEL JOSEPH RUGENDORF,

defendant herein, did unlawfully receive, conceal and store certain stolen goods, wares and merchandise, to wit:

81 FUR PIECES

of a value in excess of Five Thousand Dollars ($5,000.00), moving as, a part of, and constituting interstate commerce, to wit, from Shreveport, Louisiana and Mountain Brook, Alabama, to Chicago, Illinois, the said defendant then and there well knowing the same to have been stolen; in violation of Section 2315, Title 18, United States Code.

5 Arraignment and plea of not guilty.

6-8 Petition to quash the search warrant and to suppress the evidence as follows:

Your petitioner, Sam Rugendorf, respectfully states that he is the defendant herein. Your petitioner further shows that on to-wit March 22, 1962, certain agents of the Federal Bureau of Investigation, acting under color of authority of a pretended search warrant issued on March 22, 1962 by C. S. Bentley Pike, United States Commissioner for the Northern District of Illinois, Eastern Division, executed a search warrant on the residence at 3117 West

Jarvis Avenue, Chicago, Illinois, and took from the said house a certain number of furs mentioned in the indictment herein; and that the evidence thus obtained by the said illegal search and seizure constituted the basis for the indictment herein against your petitioner.

Your petitioner attaches hereto and makes a part
7 hereof true and certified copies of the affidavit for search warrant, the search warrant, and the return to said search warrant.

Your petitioner further shows that the search and seizure of the said items of furs as above described at the premises at 3117 West Jarvis Avenue, Chicago, Illinois, were illegal and unlawful and void in violation of the Fourth and Fifth Amendments to the Constitution of the United States and the Statutes and Laws of the United States for the following reasons:

1. That the affidavit for the search warrant is false and untrue.

2. That the said affidavit for search warrant is insufficient in law to establish probable cause for the issuance of a search warrant.

3. That the affidavit states no facts sufficient to establish probable cause justifying the issuance of a search warrant.

4. That the search warrant herein was issued on the basis of an insufficient affidavit for such search warrant and solely upon the belief of the affiant who made said affidavit upon certain unsupported hearsay.

Your petitioner further shows that the United States
8 Attorney intends to use the evidence so unlawfully seized against your petitioner in the trial of this cause unless an order is entered herein quashing said search warrant and suppressing the evidence obtained by said unlawful search and seizure.

Wherefore, your petitioner prays that an order may be entered herein suppressing the evidence obtained by said unlawful search and seizure and all clues derived therefrom and excluding said evidence at the trial and hearing of this cause.

Sam Rugendorf
Sam Rugendorf, Petitioner

State of Illinois,
County of Cook—SS.

Sam Rugendorf, being first duly sworn on oath, deposes and says that he has read the above and foregoing petition by him subscribed, that the matters contained therein are true and correct.

Sam Rugendorf
Sam Rugendorf

Subscribed and sworn to
before me this 4th day
of June, 1962.
Avrum Dannen

Notary Public

9-12 Search warrant, the return and the affidavit for search warrant.

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Commissioner's Docket No. 18—Case No. 9037

UNITED STATES OF AMERICA

v.

BASEMENT OF SINGLE FAMILY RESIDENCE AT 3117 WEST JARVIS AVENUE, CHICAGO, ILLINOIS.

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation.

Affidavit having been made before me by MARLIN H. MOORE, that he (has reason to believe) that (on the premises known as) the Basement of a Single Family Residence, located at 3117 West Jarvis Avenue, Chicago, Illinois, in the Northern District of Illinois, there is now being concealed certain property, namely approximately 80 fur garments of a value of approximately $40,000.00, which are the proceeds of a burglary which took place in MOUNTAIN BROOK, ALABAMA, on February 10, 1962, and which garments were transported thereafter from MOUNTAIN BROOK, ALABAMA, to CHICAGO ILLINOIS, and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the (premises) above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the (place) named for the property specified, serving this warrant and making the search (in the daytime) and if the property be found there to seize it, leaving a copy of this

warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date as required by law.

Dated this 22nd, day of March, 1962.

(SEAL) *C. S. Bentley Pike,*
U. S. Commissioner.

RETURN

I received the attached search warrant 3-22, 1962, and have executed it as follows:

On 3-22, 1962 at 5:00 o'clock P.M., I searched (the premises) described in the warrant and

I left a copy of the warrant with *Belle Rugendorf* together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

59 Fur stoles
4 Bolero length Fur Jackets
18 Fur Jackets

This inventory was made in the presence of *W. J. McCormick, R. L. Malone* and *Belle Rugendorf.*

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Marlin Moore
Special Agent FBI

Subscribed and sworn to and returned before me this 23 day of March, 1962.

C. S. Bentley Pike
United States Commissioner

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Commissioner's Docket No. 18—Case No. 9037

UNITED STATES OF AMERICA

v.

BASEMENT OF SINGLE FAMILY RESIDENCE AT 3117 WEST JARVIS AVENUE, CHICAGO, ILLINOIS.

AFFIDAVIT FOR SEARCH WARRANT

Before C. S. Bentley Pike, Chicago, Illinois

The undersigned being duly sworn deposes and says:

That he (has reason to believe) that (on the premises known as) the basement of a single family residence located at 3117 W. Jarvis Avenue, Chicago, Illinois, in the Northern District of Illinois, there is now being concealed certain property, namely approximately 80 fur garments, being stoles and jackets of a value of approximately $40,000.00, which fur garments were taken in a burglary in MOUNTAIN BROOK, ALABAMA, on February 10, 1962, which are goods of a value in excess of $5,000.00, which had been stolen in MOUNTAIN BROOK, ALABAMA, on or about February 10, 1962, and thereafter transported in interstate commerce to Chicago, Illinois.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

That this affiant is in receipt of a communication from Special Agent L. Dean Paarmann of the Birmingham, Alabama, Office of the Federal Bureau of Investigation, stating that on February 10, 1962, a burglary took place in MOUNTAIN BROOK, ALABAMA, in which 82 fur garments of a value of approximately $42,044.00 were stolen. This affiant further states that there is contained in said communication a description of said fur garments

and that said fur garments consist of mink, otter, and beaver stoles and jackets (the majority of which garments were mink), and containing no full length coats.

(Continued on attached sheet)

(SEAL) *Marlin Moore*
Signature of Affiant
Special Agent, Fed. Bureau Invest.
Official Title, if any.

Sworn to before me, and subscribed in my presence, March 22, 1962.

C. S. Bentley Pike,
United States Commissioner.

This affiant further states that Special Agent W. J. McCORMICK of the Federal Bureau of Investigation told this affiant that a confidential informant who has furnished reliable information to the Federal Bureau of Investigation in the past told McCORMICK that FRANK SCHWEIHS of Chicago, Illinois, with others, committed the fur burglary in Alabama, and, further, that McCORMICK told the affiant that on approximately March 1, 1962, Chicago Police Officer JAMES KELLEHER told McCORMICK that he saw FRANK SCHWEIHS at RUGGENDORF BROTHERS MEAT MARKET, managed by SAMUEL RUGGENDORF, at 2449 South Wentworth Avenue, Chicago, Illinois; further, Agent McCORMICK advised this affiant that another confidential informant who has furnished reliable information to the Federal Bureau of Investigation in the past told McCORMICK that LEO RUGGENDORF was a fence for FRANK SCHWEIHS; that SAMUEL RUGGENDORF was LEO RUGGENDORF'S brother and was associated in the meat business with his brother.

This affiant further states that he was told by Special Agent J. J. OITZINGER of the Federal Bureau of Investigation that a confidential informant who has furnished reliable information to the Federal Bureau of Investigation in the past told OITZINGER that FRANK SCHWEIHS, TONY PANZICA, and MIKE CONDIC were accomplished burglars who disposed of the proceeds of their burglaries through LEO RUGGENDORF.

This affiant further states that a confidential informant who has furnished reliable information in the past to the Federal Bureau of Investigation told this affiant, on March 16, 1962, that he saw approximately 75 to 80 fur garments in the basement of the home of SAMUEL RUGGENDORF at 3117 West Jarvis Avenue, Chicago, Illinois, within the past week and described these fur garments as mink, otter, and beaver jackets and stoles, the most of which were mink; and that the labels had been removed from said fur garments; further, that there were no full length coats, and that the informant had been told the furs were stolen.

This affiant further states that a description of all furs taken in burglaries and robberies in the United States, exceeding $5,000.00 in total value, is furnished to the Federal Bureau of Investigation, and that he has reviewed the description of all fur garment merchandise taken in said burglaries in the past six months, and that the only burglary totaling over $5,000.00 in the United States, reported to the Federal Bureau of Investigation, containing a similar description of the furs described by the informant, is the burglary that took place on February 10, 1962, at MOUNTAIN BROOK, ALABAMA.

13 Certification by Clerk of Court with respect to the search warrant.

14-23 Government's answer to motion to quash the search warrant and suppress the evidence, stating that:

1. The petition should be stricken because the petition is verified by the defendant.

2, 3, 4, 5, 6 and 7, all denying the allegations of the petition of the search warrant.

8. The government denied that defendant had any standing to maintain the petition to quash the warrant.

24 The court ordered the hearing on the motion to suppress to be taken with the case.

25 Motion for an acquittal at the close of the government's case as follows:

MOTION FOR ACQUITTAL AT THE CLOSE OF THE GOVERNMENT'S CASE.

Comes now the defendant and respectfully moves the court to direct the jury to return a verdict of acquittal at the close of the government's case and states his reasons as follows:

1. The government has failed to prove a prima facie case.

2. The government has failed to prove exclusive personal possession of the goods in the defendant.

3. The government failed to prove the defendant possessed the goods knowing the same to have been stolen.

4. The government failed to prove that the goods in question were continuously, to the time of discovery, moving as or part of inter-state commerce.

26 Motion to suppress the evidence denied.

27 Motion for acquittal at the close of all the evidence as follows:

MOTION FOR ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE

Comes now the defendant and respectfully moves the court to direct the jury to return a verdict of acquittal at the close of all the evidence, and states:

1. The government has failed to prove exclusive personal possession of the goods in the defendant.

2. The government failed to prove the defendant possessed the goods knowing the same to have been stolen.

3. The government failed to prove that the goods in question were continuously, to the time of discovery, moving as or part of interstate commerce.

4. Defendant was not proved guilty beyond a reasonable doubt.

28-30 Verdict of the jury finding the defendant guilty.

31-34 Motion for a new trial as follows:

IN THE UNITED STATES DISTRICT COURT
* * (Caption—No. 62 CR 202) * *

1. That the evidence is insufficient to support the verdict of the jury.

2. The court erred in refusing to permit the jury to read evidence admitted by the court. During the course of the trial, the Assistant United States Attorney, in his cross examination of the defendant, unfairly suggested to the jury by the tenor of his questions, that the defendant had read questions which were put to him by his counsel, and had read the answers from sheets of paper which defense counsel was holding. Defendant denied this accusation and on redirect examination, the document referred to by the Assistant United States Attorney was marked as an exhibit and offered into evidence.

117 FBI AGENT MARLIN MOORE, called on behalf of the defendant, testified:

Direct Examination.

He was the agent in charge of the case and was assisting the prosecutor. On March 16, 1962, he had a conversation with a confidential informant who gave him certain information.

"Q. Where did you have this conversation with
118 this confidential informant?

Mr. Berg (prosecutor): I am going to object to that question Your Honor."

119 The prosecutor stated his ground for the objection that the government could not reveal the name of the informant because it would cause a possible murder. The court sustained the objection.

"(By Mr. Echeles): Q. Well, wherever it was—by the way, what is the name of this man?

Mr. Berg: Objection, same reason.

The Court: Sustained.

(By Mr. Echeles) Where is he now?

Mr. Berg: Objection.

The Court: Sustained.

Q. Well, you say you talked to him on March—
120 your affidavit states that you talked to him on March 16, 1962. Is that correct?

A. Yes.

Q. On what day did he say he saw the furs in the basement of the home of Sam Rugendorf?

Mr. Berg: Objection, same reason.

The Court: Objection sustained.

Mr. Echeles: If the Court please, I may call to the Court's attention the affidavit signed by Agent Moore, the third paragraph thereof, which states as follows, I quote:

"This affiant," meaning Mr. Moore, "further states that a confidential informant who has fur-

Such exhibit was received in evidence without objection by the government. Yet, when the exhibits were gathered to be sent to the jury room, upon motion of the government, the court refused to send such exhibit to the jury room and by such means, the court denied the defendant his right to have the jury look at evidence which was admitted by the court and was material and relevant to the issue of whether or not the defendant was telling the truth.

3. The court erred in changing its mind in refusing to permit the results of a polygraph examination to be considered by the jury. When the defendant was being cross examined by the government, he was challenged by the government to take a lie detector test. The defendant accepted the challenge and it was stipulated between government counsel and defense counsel that the results of the lie detector test be submitted to the jury along with all the other evidence in the case. On Tuesday, July 3, 1962, the court agreed that such test would be held and by further stipulation, the Leonard Keeler Institute was agreed as the organization to do the testing. Notwithstanding this stipulation, and notwithstanding the court's agreement to such stipulation and the court's announcing to the jury that the defendant would be subjected to a polygraph examination and the result of such test be read to the jury, on the next court day, July 5, 1962, the court announced to the jury that it would not permit the defendant to take a lie test because it had never been done before. We respectfully submit that the court was in error and that by this means, the defendant was irremediably prejudiced in the eyes of the jury.

4. The court erred in refusing to admit evidence offered by the defendant in that the court refused to permit any reference to the search warrant, the affidavit for the search warrant and refused to permit the search warrant and the affidavit in support of the search warrant to be received into evidence when the defendant made such an offer.

nished reliable information in the past to the Federal Bureau of Investigation told this affiant on March 16, 1962 that he saw approximately 75 to 80 fur garments in the basement of the home of Samuel Rugendorf—"

The Court: He told him on that day, but he didn't say on what date he saw it.

Mr. Echeles: Yes, your Honor, he didn't. But may I finish?

The Court: Yes.

121 Mr. Echeles: (Reading)

"—that he saw approximately 75 to 80 fur garments in the basement of the home of Samuel Rugendorf at 3117 West Jarvis Avenue, Chicago, Illinois, within the past week."

Then it goes on. If the Court please, you see, I am defending Sam Rugendorf. Now, within the past week from March 16 takes in to March 15, March 13, March 12, March 11, March 10 and March 9. I have got to account, I suppose for the activities of Sam Rugendorf on every day. It would be a lot better, it would accord with fundamental fairness for us to know when it is this informant said he saw it, so I can account for the activities of Sam Rugendorf on the day the confidential informant says he saw it there.

The Court: If the Government ever offers that confindential informant as a witness, you will be certainly fully informed.

122 Mr. Echeles: But they haven't—

The Court: At the present time the Government has stated that they will not use that confidential informant as a witness.

Mr. Echeles: I understand, but I need that information to defend my defendant, your Honor.

5. The court erred in its charge to the jury.

6. The court erred in declining to charge the jury as requested by the defendant.

7. The defendant was deprived of a fair trial by the reason of the improper acts of the prosecuting attorney and by reason of his unfair and inflammatory address to the jury over the objection of the defendant.

8. The court erred in admitting into evidence the 81 fur pieces, which evidence should have been suppressed.

9. The court erred in overruling the defendant's motion for the government to reveal the names of the informers when such information was necessary to the constitutional rights of the defendant in pursuing his motion to suppress the evidence.

10. The defendant was deprived of a fair trial in accordance with due process of law when the government prosecutor asserted in front of the jury as to what the contents of the affidavit for the search warrant was without the affidavit being allowed into evidence.

11. The court erred in disparaging defense counsel in front of the jury, thus depriving the defendant of his constitutional right to effective representation during the trial.

12. The court erred in referring to the right of the defendant to appeal in front of the jury during the course of the trial. Such comments by the court delimited the responsibility of the jury as the final arbiters of the facts.

37-38A Defendant's motion for a new trial and for probation were denied and defendant was sentenced to the custody of the Attorney General for a period of ten years under Section 4208(a)(1), Title 18, U. S. Code with the defendant to serve a minimum of two years.

38-39 Notice of appeal and certificate of mailing.

40 Statement pursuant to Rule 12(d).

41-42 Stipulation in accordance with Rule 12(e).

43-45 Motion to extend the time within which to file the record allowed.

46 Amendment to stipulation in accordance with Rule 12(e).

1-8 Colloquy.

TRANSCRIPT OF PROCEEDINGS

9-18 In advance of the prosecution presenting any evidence, the defendant made a demand upon the Government for the names of the informers as set out in the affidavit in support of the search warrant. The defense requested the names of the informants.

"Mr. Echeles: Roviera *v.* U. S., which is cited by our Seventh Circuit as authority for this proposition, states that if the informants, if the names of the informants are necessary to a proper defense of a proper presentation of the defendant's case in attacking the search warrant, then in the interest of justice it must be given to the defendant. The Government has no reason not to give it, said Roviera, and that is the controlling law.

Let me demonstrate how in our opinion the names of the informants are necessary.

I state to the Court that we will show, and I make it as an assertion to this Court, I propose to demonstrate by evidence that in the affidavit in support of the search warrants, on page 2 thereof, there are certain factual errors. These facts, if they came from an informer, are false facts, so maybe they did not come from an informer, or, if they came from an informer then we are entitled now to cross examine the informer. Maybe he did not give the information, if the confidential informer is so wrong about the facts.

They state that Sam Rugendorf was the manager of Rugendorf Brothers Meat Company. Sam Rugendorf was not the manager of Rugendorf Brothers Meat Company. He has not been associated with Rugendorf Brothers Meat Company for ten years, from 1952 to and including 1962, and we will demonstrate it by adequate proof.

It states here that an informer, a confidential informer, gave them reliable information, that Sam Rugendorf was Leo Rugendorf's brother—that part is true, your Honor; and was associated in the meat business with his brother. That is false, your Honor, and we will demonstrate it.

And so we are entitled, under Roviera, under Pierce, under Conforti, which comes from the Seventh Circuit also, to the names of the informants so that we may either seek out the informants ourselves and call them to the witness stand or perhaps the Government, to aid this Court to decide this important question, should call them himself.

They say, to get their search warrant, that a confidential informant who has furnished reliable information in the past to the Federal Bureau of Investigation told this affiant, Mr. Moore, who made the affidavit, told them on March 16, 1962 that he saw approximately 75 to 80 fur garments in the basement of the home of Samuel Rugendorf at 3117 West Jarvis, Chicago, Illinois, within the past week, that is, within the week prior to March 16.

I would suggest that not only is this informant necessary to the defendant because if he takes the stand it will demonstrate that Sam Rugendorf had nothing to do with it, or possibly his falsity, but I would suggest that perhaps he would be a pretty good witness for the Government, that they ought not to want to hide the witness, that he would pretty much make out a case for the Government.

In any event, your Honor, I rely upon United States *v.* Pierce, 275 F. 2d, our Circuit. I rely upon Roviera *v.* United States, 353 U.S. 53. And I rely upon Giordinella *v.* United States, 357 U.S. 480, as being the proper procedure that I am trying to get here, your Honor."

hibit 3 showed the side entrance of the house; Exhibit 4, the side door close up; Exhibit 5, the side entrance going down into the basement showing the stairway leading down to the basement; Exhibit 6 showing the door right alongside the stairs going into the basement; Exhibit 7 showing the same view with the door open showing a pantry; Exhibits 8 and 9 are pictures of the basement taken on July 1, 1962; Exhibit 10 showed the closets on the left in the basement, being the extreme north end and a closet on the right side—the closets being in the wall which is on the north side of the house; Exhibit 12 showing the closet doors open.

Defendant's Exhibits 1 through 12 were admitted into evidence.

158-162 ALBERT ABRAMSON testified:

Direct Examination.

He had been an insurance broker for 44 years and knew the defendant for about 33 years. The reputation of the defendant for truth and veracity, for honesty and fair dealing was the finest.

163-170 NATHAN ROSKIN testified:

Direct Examination.

He lived at 3105 W. Jarvis, was a pharmacist since 1932 and owned a drug store. He knew the defendant for the past 8 years as a neighbor. The defendant's reputation amongst his friends and relatives for truth and veracity and for fair dealing was very fine. In February, 1962, he had a key to the home of Belle and Sam Rugen-

dorf and they had a key to his home. The reason for this was that when the Rugendorffs left town to visit their daughter in Canada the witness would watch the house and when the witness left the city, Mrs. Rugendorf would watch the house and feed his dog. He knew that Belle and Sam Rugendorf were on a vacation in February, 1962.

168-170 *Cross Examination.*

The witness stated that during the time he had the key he did not place any furs in the basement nor did he permit any other person to have the key.

170-174 LAWRENCE WEINER, Certified Public Accountant for 12 years, testified:

Direct Examination.

He knew the defendant for about 10 or 12 years and that he knew the reputation of the defendant for truth and veracity and for honesty and fair dealing was very good. He also knew that the reputation the defendant bore with the bank officials with whom the defendant dealt was very high. The witness also prepared the defendant's income tax returns of the business in the 3900 block south Wallace under the name of Wallace Foods. The defendant was in partnership with his wife Belle and his son Jerry. The witness had prepared defendant's Exhibits 13, 14, 15 and 16, marked for identification.

174-177 *Cross Examination.*

The witness stated he knew several of the defendant's neighbors and met a number of the neighbors in the defendant's home.

20-22 The government objected to the furnishing of the names of the informers, stating, "... that if the government is to reveal the name of any informants they might and probably would be killed." (R. 22).

22-24 Defense counsel stated that in such event that the government had no alternative but to dismiss the case.

26 The court denied the motion and refused to require the government to reveal the names of those informers whom it would not use as witnesses.

28-43 It was stipulated that Exhibits 1 through 21 and 59 were furs stolen from a fur store in Shreveport, Louisiana on December 4 and 5, 1961; that Government Exhibits 22 through 81, except Exhibit 59, were furs stolen from a fur store in Mountain Brook, Alabama on February 10, 1962; and that the value of the furs was in excess of $5,000.00.

44-46 Colloquy.

47-58 FBI AGENT MARLIN MOORE testified:

Direct Examination.

The defendant resided at 3117 West Jarvis, Chicago, a two story brick single family dwelling, with a basement. On March 22, 1962, at about 5:00 P.M., together with FBI agents William McCormick and Robert Malon, he served a search warrant upon Mrs. Rugendorf. They went to the basement recreation room. The stairway went down on the northeast corner of the building, off the east wall, which goes into the recreation room. In the basement there was a wall running east and west through the center of the building. The back or south end of the room had two smaller rooms, one of which was a laundry and furnace room and then there was a general storage area room, shelves with storage space. Along

the east wall there was a business type desk with a telephone and in about the center of the room there was a card table and sewing machine. There were closets built into the north wall, and in the northwest corner of the basement, there were three large white bags on the floor in a pile. There were also two or three filled laundry bags with unwashed laundry hanging on the east wall. When he went into the basement he went directly to the furnace area and other storage room and looked there briefly; then came back into the recreation room. He saw agent McCormick open the doors of the closets on the north wall. In the last closet he opened there were furs, being Government Exhibits 1 through 81. The furs were hanging on individual wire hangers on a rod that went the length of the closet. They made an inventory and placed such inventory on the back of the search warrant and gave a copy to Mrs. Rugendorf. There were 82 furs in the closet and Mrs. Rugendorf identified one of the furs as her garment. They put the furs in the white bags which he saw on the floor. Three white bags were identified as Government Exhibits 82 through 85. One of the bags, Exhibit 83 was a laundry bag which Mrs. Rugendorf said that he could use and Mrs. Rugendorf emptied the dirty laundry from the bag.

59-75 *Cross Examination.*

Agent Moore testified that the defendant was not at 3117 West Jarvis when he entered. The defendant was in his store on 30th and South Wallace Streets. In one of the closets in which Agent McCormick looked, there were some jars, canned goods and bottles. Defendant's Exhibits 1 through 11 are pictures of the house from the outside showing the east entrance and various pictures of the basement and the closets. When he was in the basement, the closet door was closed and standing in the base-

ment he could not see any furs. Mr. and Mrs. Rugendorf were joint owners of the home. When he served the warrant on Mrs. Rugendorf and discovered the furs in her home, he did not arrest her. However, on March 23, 1962, one day later, she was escorted by FBI agents to the United States Attorney's office at the request of Mr. Monahan, an Assistant United States Attorney.

75 The Government offered into evidence, Exhibits 1 through 85. Defense objected for the reasons previously set out.

The court stated: "Overruled, admitted. They are admitted as evidence as one link in the chain."

76 Defense objected on the ground that the furs were obtained illegally and that a motion to quash the warrant had been filed but that no hearing was held thereon.

77-78 The court vacated its order admitting the exhibits into evidence.

HEARING ON THE MOTION TO SUPPRESS THE EVIDENCE.

78-80 JAMES KELLEHER, testified on behalf of the defendant:

Direct Examination.

That he was a police officer and in March, 1962, was assigned to the State's Attorney's office. On about March 1, 1962, he talked with FBI Agent McCormick and told McCormick that he saw one Frank Schweihs at Rugendorf Brothers Meat Market at 2449 South Wentworth Avenue. In that conversation he did not tell Agent McCormick that the Rugendorf Meat Market was managed by Sam Rugendorf.

81-82 JOHN J. OITZINGER testified on behalf of the defendant:

Direct Examination.

That he was an FBI Agent, that some time in March, 1962, he talked with FBI Agent Marlin Moore and that he brought up the names of Leo Rugendorf, Frank Schweihs, Tonly Panzica, and Mike Condic. In that conversation he told agent Moore that a confidential informant advised him that Schweihs, Panzica and Condic were accomplished burglars who disposed of the proceeds of their burglaries through Leo Rugendorf. At no time did he tell Agent Moore that Sam Rugendorf was in any way a fence.

82-83 "Mr. Echeles: If the court please, the defendant and the defendant's lawyer are now in a little difficulty in calling to the stand special agent W. J. McCormick, because yesterday I was advised by Mr. Berg that Agent McCormick is in a hospital having an operation, and I would have to inquire from Agent McCormick, you see, because the affidavit, if I may briefly explain my position, the affidavit says that McCormick told Moore that officer Kelleher told McCormick that Sam Rugendorf managed Rugendorf Bros. Meat Market. But officer Kelleher said he never said to McCormick any such thing.

"So, of course, I would want to know where he got that bit of falsity, as I will demonstrate to Your Honor's satisfaction that that information in the affidavit for the search is completely false."

SAM RUGENDORF, defendant, testified in his own behalf:

Direct Examination.

85-88 The defendant testified on his own behalf that he was a grocer and meatman and his store was located at 3758 South Wallace Street in Chicago. He was part-

194-195 JAMES KELLEHER, testified as follows:

Direct Examination.

That he was a Chicago police officer assigned to the State's Attorney's office. In connection with the stolen furs, he cooperated with members of the FBI in the investigation. He knew one Leo Rugendorf to be a receiver of stolen property. He knew nothing about Sam Rugendorf in connection with any illegal activities.

Cross Examination.

He stated he saw Sam Rugendorf in the company of Leo on numerous occasions in the past year around Twin Foods in the 3200 block on South Wentworth Avenue.

196-220 MRS. BELLE RUGENDORF, testified as follows:

Direct Examination.

She was the wife of the defendant and had been married for 32 years. She and her husband bought the home at 3117 West Jarvis and lived there for 10 years. Defendant's Exhibit 18 was the deed to the house showing that she and the defendant owned the house in joint tenancy.

On the evening on February 17, 1962, the defendant and she went to Miami, Florida by way of the Eastern Air Lines. They had made the reservation for the trip a week in advance. They were gone from Chicago for fourteen days and returned on March 4, 1962. During the time they were away her son Jerome had a key to her home, also her sister-in-law, Mrs. Rose Siegel, her brother-in-law, Leo Rugendorf, and Mr. Roskin. The reason they had the keys was to check the house, water the plants and take the mail in from the mail box. Her home consisted of three rooms on the first floor, being a parlor, dining

ners there with his wife, Belle, and his son, Jerome. Leo Rugendorf was not associated with him in the management, ownership or operation of that business. He had nothing to do with Rugendorf Bros. Meat Company, located at 2350 South Wentworth Avenue in Chicago. He neither managed it, worked there, nor drew a salary. Neither was he an officer of or a stockholder in the corporation. He had his grocery business on Wallace Avenue for around five years commencing in about April 1, 1957. Prior to that for five years back to 1952 he was not employed. Ten or eleven years prior he did have something to do with Rugendorf Bros. Meat Market. But from about 1952 he had nothing to do in the way of working for or being employed by or managing the Rugendorf Bros. Meat Market.

88-94 *Cross Examination.*

The defendant stated that in the last eight years he had not been to the Rugendorf Bros. Meat Market at 2350 South Wentworth. At one time he was the owner of Rugendorf Bros. Meat Market at 3500 Wentworth Avenue and at 3503 Wentworth Avenue. The Rugendorf Bros. Meat Market moved to 2350 South Wentworth Avenue about five or six years prior. He owned a Ford station wagon and a Ford Galaxie. His son, Jerome, who worked with him at the grocery store at 3758 South Wallace Street, sometimes went to Rugendorf Bros. Meat Market. Whenever the witness was short of a certain item of meat Jerome would run over to the Rugendorf Bros. Meat Market and pick up the meat. He himself has never been at the Rugendorf Bros. Meat Market.

95 *Redirect Examination.*

The defendant stated that whether the Rugendorf Bros. Meat Market was at 2440 South Wentworth Avenue or 2350 South Wentworth Avenue he has been to neither address in the last four years.

room and kitchen. The second floor had three bedrooms and a bathroom. The basement was partitioned in two sections. The rear—to the west of the house, was a laundry room; and the rest of the basement was finished as a recreation room with three closets. The photograph, defendant's exhibit 5, portrayed the open side door and the stairs going down to the recreation room. There was an entrance from the outside on the east side of the house going down the stairs into the basement.

She was home when Agent Moore and two other FBI Agents served a search warrant on March 22, 1962, and she saw the agents search the basement. She saw them open one of the closet doors and find a group of furs. About three days before February 17, 1962, she looked in that closet and took out of it two yellow jackets to pack for her husband. At that time the furs found on March 22nd were not there. The only fur there was a Persian lamb coat which belonged to her sister-in-law, Mrs. Jean Witt. She did not again, before she left Chicago, look in the closet. When she returned to Chicago on March 4, 1962, she had no occasion to go into the closet, nor did she look in the closet at any time between the time she returned on March 4, 1962 and March 22, 1962. The closet had a closed door. There were two other closets in the basement, the closet adjacent to the closet where the furs were found has black steel shelves, and on the shelves were gallon jars for pickling and camera equipment. She had no occasion to go into that closet between March 4 and March 22. There was a third closet in the basement adjacent to the stairway in which was kept glassware, some grocery supplies and liquor. She also had a laundry chute and the laundry and linens went down into that closet. Between March 4 and March 22, 1962, she had occasion to go into that closet to take out dog food and

96 The court inquired whether the defendant had any social relationships with his brother Leo and the defendant stated he did not.

96-97 *Recross Examination.*

The defendant stated he did not know whether the Rugendorf Bros. Meat Market was at 2449 South Wentworth Avenue or 2350 South Wentworth.

97 *Redirect Examination.*

The defendant stated that whether the Rugendorf Bros. Meat Market is at either address he has not been there.

98-99 CLARENCE CRAMSIE testified for the defendant:

Direct Examination.

That he was employed by the Rugendorf Bros. Inc. Meats at 2449 Wentworth Avenue. He had worked at that address for about twenty years; but the Rugendorf Bros. Meat Company bought the place about four years prior. He is a retail butcher there and the place has three employees. It is managed by Max Siegel. He has never seen the defendant Sam Rugendorf at his place of business, the Rugendorf Bros. Meat Market. To his knowledge the defendant had never been in the place.

100-109 *Cross Examination.*

That defendant's son, Jerome would come to the meat market at 2449 South Wentworth Avenue to get something, perhaps once a month when he ran short of something. He never met the defendant, but he saw the defendant go into the barber shop near where he worked and the defendant was pointed out to him by one of the other employees. Prior to four years ago when the Rugendorf Bros. Meat Market took over the business of the Charles Meat Company at 2449 South Wentworth Avenue, the Rugendorf

Bros. Meat Market was located at 35th and Wentworth Streets. The owner of Rugendorf Bros. Meat Market was Max Siegel. Leo Rugendorf was a salesman. Max Siegel was on the job all the time. Leo Rugendorf was a salesman who went out to get orders selling meat at retail and wholesale. He has seen Leo Rugendorf at the store.

110-112 MAX SIEGEL testified for the defendant:

Direct Examination.

That he was associated with the Rugendorf Bros. Incorporated, a meat business, from 1948 continuously. The Rugendorf Bros. Inc. Meat Market was located at 2449 South Wentworth Avenue. Before then, about four years prior, the address was 3503 South Wentworth. He was the defendant's brother in law. He was the general manager of Rugendorf Bros. Meat Market. Sam Rugendorf, the defendant, was not connected with Rugendorf Bros. Meat Market at any time since he was there.

112-116 *Cross Examination.*

The witness said that he and his wife owned stock in the corporation; that Sam Rugendorf had no stock in it. Jerome Rugendorf, his nephew, came to the store sometimes once in two weeks, sometimes once in a week when he needed some meat. Before Rugendorf Bros. Inc. moved from 3505 South Wentworth to 2449 South Wentworth, Sam Rugendorf owned no stock. Sam Rugendorf had nothing to do with the store at 3505 South Wentworth. He saw Leo Rugendorf very often, most every day. The defendant Sam Rugendorf has never been to the store at 2449 Wentworth. He has never seen Sam together with Leo at the store. He did see them on a holiday.

Mr. Berg: I object, your Honor, on the basis of the arguments that I advanced before.

Mr. Echeles: Respectfully, your Honor, *United States* v. *Roviera* suggests to the Court that we are entitled to some information about this so-called confidential informant, and even if the Court denies my motion that we be given his name, denies the motion about where the conversation took place, can we at least not have the date on when it took place so Sam Rugendorf can defend himself?

I am demonstrating to this Court, I hope successfully, that other information, factual information, so-called,
123 asserted by Agent Moore in his affidavit is false, and if given an opportunity, I will demonstrate to the Court beyond peradventure of a doubt that other information here is false, because if the FBI cloaks itself in an affidavit under oath by saying that "We have confidential information about a matter" and I prove to this Court that some of that information is false, then how does the defendant defend himself when we want to show that other information is false?

124-128 Argument of counsel.

128 "Mr. Echeles: . . . but I ask the court to let me go
129 into the facts as set out in the affidavit and to go behind the affidavit, as we are permitted in *United States* v. *Pierce*." The court foreclosed further questioning of the witness and sustained the objection of the government.

"Mr. Echeles: Well, if the court is foreclosing me from—

The Court: I certainly am. I have said it several times, counsel."

130-132 In arguing the insufficiency of the affidavit in the search warrant the following colloquy occurred:

"Mr. Echeles: If the court please, in two paragraphs here they have got—here is one place where it is false.

I put Officer James Kelleher on the witness stand to ask him whether or not he told Agent McCormick that Sam Rugendorf managed the Rugendorf Bros. Meat Market. Officer Kelleher said he did not tell McCormick that. Yet Agent Moore makes an affidavit that Agent McCormick told him, Moore, that Officer Kelleher told McCormick that Sam managed the meat market. I have demonstrated the falsity of it Your Honor.

The Court: Even if part of the affidavit should be false, the main part of it, the material part, is true, because they actually found the garments there. Bring the jury.

Mr. Echeles: But the court doesn't let me inquire into that part of as to which the court believes it to be true.

The Court: It is is unnecessary to go further into the matter." (R. 132)

The court received exhibits 1 through 85 into evidence.

133 Whereupon the government rested its case.

The court denied the motion to suppress the evidence.

133-134 Whereupon the defendant presented his motion for acquittal at the close of the government's case.

135-147 Argument of counsel.

148 Motion for directed verdict of acquittal denied.

EVIDENCE ON BEHALF OF DEFENDANT.

150-157 DANTE MASCIONE testified:

Direct Examination.

He was a professional photographer for thirty years. He made certain photographs at the home of Samuel and Belle Rugendorf at 3117 Jarvis Avenue. Defendant's Exhibit 2 showed the front and the east entrance, the house facing north, it being on an east and a west street; Ex-

178-180 JAMES DeBENDETTO, testified as follows:

Direct Examination.

That he was a distributor of dairy products and knew the defendant for about five years in connection with supplying the defendant's store with dairy products at 3758 South Wallace. He also knew other suppliers of the store, bread men and grocery men; and he knew that amongst the business associates or business people with whom the defendant did business in the area where he had the store that the defendant's reputation for honesty and fair dealing was good.

181-183 MRS. ROSE LAMS, testified as follows:

Direct Examination.

That she lived at 3115 West Jarvis just to the east of the home of the Rugendorfs. On the afternoon of February 18, 1962, between 3:00 and 5:00 o'clock a man was coming up her sidewalk to the front of her house and just slipped and caught himself. He rang her bell and introduced himself as Samuel Rugendorf's brother, Leo. He told her that Sam had given him the key to the house and that if she saw any lights in the house she should not call the police.

She had seen Leo Rugendorf once before.

184 *Cross Examination.*

Mrs. Lams stated she did not know who Leo Rugendorf was until he introduced himself. She did not see Leo enter the home at 3117 Jarvis nor did she ever see him again.

184-185 *Redirect Examination.*

Mrs. Lams testified that to her knowledge, Mr. and Mrs. Rugendorf were in Florida on February 18.

185 *Recross Examination.*

Mrs. Lams stated that Mrs. Rugendorf told her they were going to go to Florida and they generally tell her when they are going on a vacation and where they are going.

186-189 CLARENCE CRAMSIE, testified as follows:

Direct Examination.

That he worked for the Rugendorf Bros. Meat Company, Inc. at 2449 South Wentworth Avenue in Chicago for about four years. During those four years he never saw the defendant at the place of business; nor was the defendant ever employed there. On March 22, 1962, two FBI agents came into the place and asked for Sam Rugendorf. Max Siegel, his boss, told them that Sam Rugendorf's place of business was at 38th and Wallace and the agents left.

189-193 RICHARD B. LEE, testified as follows:

Direct Examination.

That he was an FBI agent and on March 22, 1962, in the company of FBI Agent Frank Grundler, arrested Samuel Rugendorf shortly before 6:00 P.M. at 3758 South Wallace Avenue in a store by the name of Sam's Wallace Foods, which was a little grocery and meat market. Before he went there he tried to find Sam Rugendorf at Rugendorf Bros. Meat Market, at 2449 South Wentworth Avenue. He was directed to go to 2449 South Wentworth Avenue by another FBI agent whose name he could not recall.

to take the laundry into the back utility rom where she did her laundry. Her husband, Sam, did not go into the basement between March 4 and March 22, 1962. He went to work between 6:30 and 6:45 every morning and returned at about a quarter to eight at night. He then had his supper, watched TV, and by 9:30 or a quarter to ten he went upstairs to bed. He worked seven days a week. Other than going to Florida, she and her husband have on occasion to go to Toronto, Canada to visit a daughter and three grandchildren.

On March 5, the day after she returned from Florida, she left her house to go to the bank and to visit her other grandchildren who live in Skokie. Just she and her husband lived in the house, so that when she was away the house was empty, other than a dog. On March 6 she went to her skin doctor and then to the veterinarian to pick up her dog. On March 7 she played cards with some of the girls and her sister-in-law, and was away from her home for four or five hours. On March 8th she went downtown with a friend, had a movie and lunch out. On Friday, she was home because the cleaning woman came on Friday. On Saturday, she went to the beauty parlor, then came home to let the dog out and put him back in the house. She then went to play Mah-Jong until 5:30. On Sunday she was always home. The following week, commencing with March 11, her routine was approximately the same. She was away from her home generally three or four hours nearly every day. During the time she was away from home, her husband is at work.

When the agents discovered the furs in one of the closets in her basement, Agent Moore asked her if she knew how the furs got there and she told him she was just as surprised as he was. He said that they had an informer who told them that the furs were stored in the house. One of

the agents said, "Your brother-in-law Leo has been the source of embarrassment to you people for some time now." She just looked at him, not knowing what to say, and she said, "Well, you learn to live with some things." (R. 213).

When the agents sorted the furs and took the bags that were in the closet to put the furs in there wasn't enough room to put them in the bags. In a corner of the recreation room near the pantry she had a laundry bag filled with soiled laundry. She emptied the laundry and gave the agents her laundry sack, which is Government Exhibit 83, the bag with the name Rugendorf printed on it. The three canvas bags being Government Exhibits 82, 84 and 85 were in the closet where the furs were. They could not be in the other corner because they have a pumping system there for flooding.

The next day, March 23, 1962, two FBI agents came to her home and stated that Mr. Monaghan, an Assistant United States Attorney, wanted to talk to her, so she went downtown with them and talked with Mr. Monaghan. No one was present in the room until the very end.

217 "Mr. Monaghan said that my husband was arrested because stolen furs were found on the premises of our home, and he said, "Well, we know your husband didn't do it, his brother Leo did it, because his brother is a well-known fence and he fences for two of his associates by the name of Panzica and Condick, and," he said, "your husband will be let out on bail, they're making bail for him now, there's an attorney there to see him, and when you go home and you talk to him ask him, is he going to take the blame, because he is the receiver? We have the merchandise found on your premises. Or is he going to tell us what we want to know?"

Mr. Monaghan asked her who had keys to her home and she told him that her son Jerome, her sister-in-law Rose Siegal and her brother-in-law Leo Rugendorf had keys.

Mr. Monaghan told her that she knew that her son
218 and her sister-in-law didn't do it but that she knew her brother-in-law did it. She told Mr. Monaghan, "I don't know, I wasn't there, I was not in town"

Her husband had his own place of business at 3758 South Wallace, Chicago, a grocery and meat store. They purchased the business on April 1, 1958 and she was in business with their son Jerry and her husband Sam. The defendant had no association with Rugendorf Bros. Meat Company on Wentworth Avenue at all. For five years prior to 1958, Sam was unemployed because of his health. He was a severe diabetic and was going blind. Prior to 1952, the defendant was connected with Rugendorf Bros. Meat Company.

Her home was heated with gas, and it runs without attending to it.

Between March 4 and March 22, 1962, she did not see or talk to her brother-in-law, Leo Rugendorf.

221-248 *Cross Examination.*

Mrs. Rugendorf stated she left Chicago on February 17, 1962, by Eastern Air Lines, stayed 10 days in Miami and 4 days in Nassau and returned to Chicago on March 4. For the trip she took certain clothes out of the particular closet where the furs were found, being two men's summer jackets. The other clothes were in the upstairs closets.

Both she and her husband each had a suit case.

222 "Q. Mrs. Rugendorf, when these agents came to your home on March 22 with this particular search warrant you stated that one of the agents said that
223 two informants or an informant had told them that

these furs were stored in your basement, is that correct?

A. Yes, sir, that was what was written in the warrant.

Q. Did they say that verbally to you, that an informant had told them that these furs were illegally stored in your basement?

The Court: Would you repeat that question? I didn't—

The Witness: I understand the question, Judge. But it has, you know—so much has happened since then, the exact wording I don't think I would remember, sir.

By Mr. Berg:

Q. In other words, you read it in the warrant?

A. I read the warrant. They handed me the warrant after they—see, when they came to the door and rang the bell, Mr. Moore showed me his credential, and he said could he and the other two gentlemen come in and talk to me? And I said, "Yes," and I opened the door and let them in. He gave me the warrant and I read the warrant. Couldn't believe what I was reading.

Q. What did you say at that time, if anything, when you had finished reading the warrant? Do you recall what your exact words were?

A. I don't remember the exact words. I know I 224 was just stunned. They said they would like to see the basement of the house and I said, "Yes, sir," and I put on the lights—

Q. Weren't your exact words after you read the search warrant that was presented to you by Agent Moore, quote, "Sam and I have been gone on vacation. If there's anything in our basement that is stolen we don't know anything about it. It must have been put there while we were gone by Sam's brother Leo"? Isn't that what you said?

A. No, sir. No, sir.

Q. You did not say that?

A. No, sir.

Q. All right. When you came down into the basement you stated that one of the agents said, "Yes, we know that Leo has been a source of embarrassment to you and that he has been much trouble to you and your family"?

A. He said, "He has been a source of embarrassment and humiliation," to us.

225 Q. And isn't it true, Mrs. Rugendorf, that actually it was you who said that Leo had caused you much embarrassment in the past as concerning his criminal activities, and that you felt that this was another instance of Leo getting Sam in trouble, wasn't it you who said that and not an agent?

A. No, sir.

Q. You did not say that?

A. No, sir.

Q. Mrs. Rugendorf, when you opened up the fur, or they opened up the fur closet, and you saw all those furs there—and you did see them there, didn't you, when they opened up the closet?

A. All I says was, "Oh, my God!"

Q. You said, "Oh, my God"? Isn't it true that upon seeing the furs you first stated, "Well, I have furs of my own, they might be in here"?

A. No, I didn't. He asked me, were mine in there?"

When the closet door was opened the agent asked her if any of the fur pieces were hers and she said that her fur pieces must be upstairs. After examining the furs in the closet, she identified a Persian Lamb black coat and stated that it belonged to her because it was in her house. The fur actually belonged to her sister-in-law, but she had the coat for a couple of years and she automatically said that the coat was hers.

The three white bags were not lying on the floor in the panel basement in plain view in the northwest corner. She told the agent she never saw the bags before when they brought them out of the closet. Her brother-in-law Leo had a key and did not return it either to her or to her

husband. The key was not returned to her husband on March 5, 1962, by Leo Rugendorf. She saw her brother-in-law quite often; he would come to her house. When she was out of the house her husband had no occasion to come home in the daytime once he had gone to work. Her residence was 7400 North and 3100 West. Sam's place of business was 3700 South and about 600 West.

Her son and sister-in-law Rose always had a key to the house.

When the warrant was served upon her she glanced through it. She recalled there was no name on the warrant but that it just said, "Resident, 3117 West Jarvis Avenue", and she thought that the warrant was to search the basement of the premises. She did not remember the exact words in the warrant, but in Mr. Monaghan's office, Mr. Monaghan told her the Government got their information from an informant who was a government informant on previous occasions. The actual search warrant itself stated that furs were in the basement and they directed a search at the residence at 3117 West Jarvis and the furs were suspected of having been taken from a burglary in Mountain Brook, Alabama, on February 10th. When Mr. Moore handed her the warrant and stated they would like to see her basement, he did not say anything about informants.

249-285 SAMUEL JOSEPH RUGENDORF testified on his own behalf as follows:

Direct Examination.

That he lived at 3117 West Jarvis, was fifty-five years of age. He started working when he was six years old selling newspapers, after which he shined shoes. He completed one year high school and then left to go to work as a messenger boy delivering telegrams. He worked as an apprentice butcher in a butcher shop when he was four-

teen. With the exception of a five year period from the age of fourteen until his present age, he was continuously engaged in the meat and grocery business. In 1928 he started his first business at 3500 Wentworth Avenue under the name of Herman Rugendorf which was his father's name. He owned and ran the business for thirty years from 1927 until about 1947 or 1948. It was a grocery, fruit, vegetable and meat business. He started with his sister Jean Rugendorf who was now Mrs. Jean Witt. For twenty years he worked nearly every day including Sunday. From 1927 until 1947 when he was running the business known as H. Rugendorf, he was never arrested.

In 1947 he took into partnership his younger brother, Leo. The name was then changed to Rugendorf Bros. Sometime between 1947 and 1952, the partnership was changed to a corporation and they moved across the street to 3503 Wentworth Avenue. In 1952 he disassociated himself from the business in which his brother was a part, which was known as Rugendorf Bros., Incorporated. From 1952 to the present day he had no business connection with Rugendorf Bros. Meat Company with which his brother Leo was associated.

When he left in 1952 he wasn't feeling well, as he was a diabetic and was losing the sight of his eyes. He was advised to take it easy. He did so for about five years until 1957. In 1957 he started another business known as Sam's Wallace Foods located at 3758 South Wallace Street, Chicago. It was a combination grocery store and little meat store. His partners in the business were his son, Jerome, and his wife. Leo Rugendorf was in no way connected with his business on Wallace Street; and he was in no way connected with Leo Rugendorf's business.

From 1947 to 1952 he was never arrested or charged with any crime. From 1952 until 1957 when he started

his business he was never arrested or charged with any crime. From 1957 when he started his business to March 22, 1962, he was never arrested or charged with any crime.

Since he purchased his store his routine was as follows: He woke up at 5:30 or a quarter to six every morning. He washed, shaved, had a cup of coffee or some juice and went to the store. The store hours were from 7:30 in the morning until 7:00 at night, although he was sometimes there from a quarter to 7:00 until 7:30 or 8:00 o'clock. On Sundays he arrived at the store at 7:00 in the morning and stayed there until 2:30 or 3:00 o'clock in the afternoon. He usually arrived home at about 8:30 or a quarter to nine in the evening. His home was about 19 miles from the store. He took trips to Canada with his wife for the purpose of seeing his grandchildren in Toronto. During the time when they were absent, he had given his keys in the past to his son Jerome, to his neighbor, Nathan Roskin, and to his sister, Rosalie Siegel. His brother, Leo Rugendorf had a key.

On February 17, 1962, he and his wife left Chicago for a vacation. They had the reservations for the ticket one evening prior. They told his sisters, friends and neighbors they were leaving town.

His brother, Leo, came to his place of business at 3758 South Wallace on the night of February 17, 1962, around 6:00 or 7:00 o'clock. Leo asked who was going to look after the mail, clean the sidewalks and everything else and he told Leo that his son Jerry would do it. Leo said that Jerry had to open the store every morning and stated that he got down a little later every day and so why not let him watch the house and bring in the mail. Accordingly, he gave his brother the keys.

From that day, on February 17, 1962, until this day he had not seen or talked to his brother Leo; nor had Leo returned the key.

He left Chicago on February 17, 1962, and returned on March 4th. Prior to February 17 he had no occasion to go into the basement and look in the closets for any reason. From March 4 to March 22, 1962, he did not go to the basement for any reason. When he came home from work at about 8:30 at night, he washed up, had his dinner, observed television for a little while and by the time he watched television, he got drowsy and so he went upstairs to the bedroom to sleep so he could get up early the next morning. On Sunday afternoons between March 4 and March 22, he came home at about 3:00 o'clock in the afternoon. He had no occasion to go to the basement for any reason. His house was heated by gas and it was not necessary for him to attend to the heating. The thermostatic control to the gas was in the parlor of the house and that regulated the heat.

He did not know at any time that furs were stored in the basement of his home in a closet. He did not put them there. Neither did he aid or abet anybody in putting them there. Neither did he receive or conceal the furs which were introduced into evidence. He did not have anything to do in any manner with the receiving or the concealing or the storing of the furs introduced into evidence.

On March 22, 1962, at around 5:30 P.M. he was arrested. He had never been arrested in the 55 years of his life before. About 6:00 o'clock or 7:30, two FBI men arrested him. They put him in an automobile and one of the agents asked him where his brother was. They asked where they could find Leo and he told them at Leo's place of business at 23rd and Wentworth. They asked him about how many fur pieces his wife had and what his wife was going to do with the furs. He told them that his wife had one fur piece that was 15 years old, another piece about 12 years old and another one about 18 or 20 years old. They then took him to the FBI headquarters. Other agents were in the room. They asked him about his wife, about

his home life, about everything. They asked him where he lived and they asked him if he knew that they had just been to his home and that they had taken out a lot of furs. They asked him if he was down in Alabama or New Orleans or somewhere. He was dazed and didn't know where he was because this was the first time he had ever been interrogated. He had never been to Alabama. He told them everything he knew since he was born. The asked him about the furs and he told them he had never seen any furs. He didn't know anything about furs. After being interrogated for about an hour or hour and a half, he started screaming and stated he needed his Orinace. He told them he was a diabetic in the worse form and that he needed Orinace. They were very nice. Some gentleman said to another one to go and get him the Orinace. They asked him "Are you going to tell us who put them there?" "I said, 'I don't know. I was out of the country at the time.'

"Did your brother put them there?

"I says, 'I would not know.'"

"Well, we know your brother put them there. If you will tell us that your brother put them there you can go home." (R. 278).

279 I says, "I cannot tell you my brother put them there because I wasn't there to see him put it. You fellows saw him put it there, you fellows claim it was him, why do you not pick him up instead of me? I have never been arrested, I have never been brought in, I have never been in anything like this, I'm sick, I haven't had a thing to eat all day, I'm a diabetic, I've never been used to this treatment, and I'm very, very scared and nervous."

A man took me into—the two gentlemen got through with me, took me into another room, and they showed me the fur coats. They were on a rack in an office, with a lot

of men, fellows, standing around. A gentleman says to me, I don't know his name, there were between six or seven gentlemen around the table and the fur coats were strung all over the room, he says to me, "Do you recognize them?"

I says, "No, sir."

He says, "Do you mean to tell me you don't recognize them?"

I says, "No, sir."

He says, "They were taken out of your basement."

280 I looked at the man. I says, "Out of my home, out of my basement?"

He says, "Yes." Walked over to a bunch of bags, picked up the bags, he brought them over, he said, "Here, is this your bag, your laundry bag?"

I says, "I wouldn't know."

He says, "Man, your name is on that bag, you got—"

I says, "Yes."

He says, "Is that your name?"

I says, "Yes."

He says, "And you mean to tell me you don't know that that laundry bag is yours?"

I says, "Yes, sir, I mean to tell you, I don't know." He says, "This bag was taken out of your home and you mean to tell me this is not your bag?"

I says, "That is true."

He says to me, "Where is Leo?"

I says, "I do not know, unless he is in his butcher shop, or home."

"Do you know his home number?"

281 I was in a daze, I was hungry, I was tired.

He says, "Can you get him on the phone? What is his number?"

I says, "Right now I don't even know my own name, bad enough, but he's in the telephone book. If you will look it up you will find the number."

They handed me the phone book. I was too nervous. They looked it up. They handed me the phone.

I says, "Will you dial the number please?"

I was shaking. They dialed the number, they gave me the number, they told me what to say.

My sister-in-law Kate Rugendorf answered, Leo's wife. I says, "Kay," I says, "this is your brother-in-law Sam Rugendorf." I says, "Is Leo there?"

She says, "No, he's not in. Where are you at?"

I was told to say that wherever I am she cannot reach me, because I will not be at the same number long, I would call her back.

282 The gentleman that got that number heard the conversation, told me to hang up and tell her I'd call back, and I hung up.

He says, "Do you know where else he could be?"

I said, "If he's not home I do not know his haunts, but you can try. If you fellows know I will be happy to do whatever you want."

He says, "How about Rose Siegel? Could he be at Max's or Rose's house?"

"We can try."

"Do you know their number?"

"Yes."

"What was it?"

I gave them the number, "But you'll have to dial."

They dialed it for me. I got ahold of Rose Siegel, and she says, "Who is this?"

I says, "This is your brother. Is my brother Leo, or your brother Leo there?"

She says, "Where are you at?"

The same answer I gave to her. I says, "Do you know where he's at?"

She says, "No, but if he comes in where can he 283 reach you?"

I said, "I'll call him back," and that was the end of the conversation.

They took me back into the other room where I was interrogated, kept me there, kept asking me question after question. He says to me, you know, he says, "We don't believe you, that you don't know where your brother is, and we know you know where he's at."

I said, "I'm sorry, I don't. I've cooperated with you in every manner, shape or form. You took me out of a place of business, I have had nothing to eat all day long, I'm hungry, I'm tired, and more so scared."

"Well," he says, "well," he says, "you know you can go home right now if you will tell us Leo put the furs down there."

I says, "If I can tell you that Leo did it and saw him do it I will tell you. I do not like this. I have never been put through this kind of a deal and I do not like it."

He says, "Well, Sam, it looks like you're not going home tonight." But before that he says to me, "Will 284 you swear on your mother's grave that you know nothing about these furs?"

I says to the gentleman, I says, "Not only will I swear on my mother's grave, I'll swear on my father's grave. I'll also take a lie detector test and I'll pay for it myself."

With that they says, "Well, come on." The gentleman that was in charge, whoever he was, I do not know his name, says. "Take him, have him locked up, but before you do see that he gets his Orinase, see that he gets his—something to eat."

They took me into their car, they rode me down to Van Buren or somewhere to a restaurant, one of the agents got out, which was very, very nice, I says, "I haven't had my Orinase, I haven't got a prescription, please go into a Walgreen Drug Store, tell him you have a man that is a diabetic that must have Orinase."

The gentleman says, "I will go in." I think his name—since he was up here on the stand, his name must be Mr. Lee.

285 No agent or anybody with the United States Attorney's office gave him a lie detector test as he reqested. He was willing even now to take a lie detector test.

He did not know where his brother Leo was and he had no contact with him since he returned to his home on March 4, 1962.

286-329 *Cross Examination.*

He testified that other than on social occasions, he did not see his brother Leo. He had seen his brother two doors east of the Rugendorf Bros. Meat Company, because that is where his barber was, the barber where he had been going for the last fifteen or twenty years. The barber-shop's name is Materio's Barber Shop. He has never been in the Rugendorf Bros. Meat Market. He has seen his brother at the Twin Food Products. He did not tell agents Lee and Grundler that Leo returned the key to him at about March 3 at his store.

His brother Leo lived at 4020 Chase Street in Lincolnwood, Illinois, about a mile from his home. Leo has been to his home and he has been to Leo's home. He did not have a conversation with Leo on March 3, nor did he tell the agents that he had.

296 By Mr. Berg:

Q. Did Leo put these furs in your basement?

A. I do not know, sir. From all indications, from what the Federal Bureau of Investigation men, when they had me under interrogation, told me, it was Leo, and they must know.

Q. Why do you suspect Leo of putting these furs
297 in your basement, other than the fact, you state here, you allege, that the FBI made these statements to you.

A. I did not allege. They did make them.

Q. What other reason do you have to suspect your brother Leo of putting these furs in your basement?

A. Everybody keeps hammering away at me, "We know it is not you, we know it is not you, it is your brother Leo, it is your brother Leo."

Q. What other reasons—

A. It is only hearsay.

Q. What other reasons do you have to suspect that your brother Leo put these furs in your basement?

A. What other reasons do I have to suspect?

Q. What other reasons do you have to suspect that Leo put these furs in your basement?

A. Just hearsay.

Q. What hearsay?

A. From your own people, the Federal Bureau of Investigation have been hammering away that he is a fence, he's a thief, he's this, he's that, the newspapers have been clamoring. If he is I didn't do it. You people say I didn't do it. Yet I am up here on trial for something
298 I didn't do. But Leo did it, because you people say—and as long as I say I do not know, I wasn't in the country, I am sitting here being tried for my life, is that it?

Q. Mr. Rugendorf, will you say from the stand then that it is only because you state that the FBI agents told you that Leo did it, that that is the only reason you suspect Leo put them in your basement?

A. Not only will I state, I will take a lie test right here in front of everybody here.

Q. So, therefore, if the FBI agents did not make this statement to you then you have no reason to suspect that Leo put them there?

A. Right you are, sir.

312 When he was being interrogated in the FBI Headquarters in the room he had no conception of time. It seemed to him like a lifetime, because he was never interrogated before in his life.

Q. How long were you in that room where they were interrogating you, as you put it?

A. As I say, Mr. Attorney, I don't know the conception of time. When you are locked up, you are nervous, you are irritable, you are hungry, and you are scared half to death, you have no—no knowledge of how much time you are in a place. You think you are there a lifetime and it 315 might be five, ten minutes, sir."

323 Q. Mr. Rugendorf, have you discussed your testimony with your counsel, your testimony before this court and jury?

A. I have talked to my counsel.

Q. With Mr. Echeles?

A. Yes. But I didn't know what testimony I am going to give, unless answer the questions you have given me. I didn't expect them.

Q. Well, the direct testimony of Mr. Echeles, the questions that he asked you, had you ever gone over those with Mr. Echeles?

A. I have talked to my counsel.

Q. And has he asked you those questions?

Mr. Echeles: I object, your Honor, what goes on between him and me.

The Court: Objection sustained.

Mr. Berg: I think, your Honor—

The Court: He is entitled to talk to his counsel. That is all right.

By Mr. Berg:

Q. Isn't it true that you were familiar with the 324 questions that were asked you today, that your counsel asked you on direct—

A. I refuse to answer that.

Mr. Echeles: Now, Sam, answer that question.

The Court: Wait a minute. Read the question. Read the question back.

The Witness: I don't understand what he is driving at.

The Court: Read the question back, Mr. Reporter.

(The last question was read by the reporter.)

The Court: Is the first part your question, isn't it true that you were familiar with the answers? Is that all of your question?

By Mr. Berg:

Q. Isn't it true that you were familiar with the questions that your counsel asked you on direct examination today?

The Court: Do you mean familiar with the answers to those questions?

Mr. Berg: I would like to know if he was familiar 325 with the questions.

The Court: All right. He may answer as to whether he was familiar with those.

A. I still don't understand what you are trying to get me to answer.

Mr. Echeles: Just answer the question if you can.

A. Well, he has been asking me questions here—

Mr. Echeles: Mr. Rugendorf, just listen to the question.

The Court: Just answer the question. Read it back.

(The last question was read by the reporter.)

A. Yes. I was answering the questions today.

By Mr. Berg:

Q. No. Did you know what questions your attorney was going to ask you today on direct examination, sir?

A. Yes.

Q. And you knew what answers you were going to give to, didn't you?

A. What questions and what answers I was going to give?

326 Q. Yes.

A. I was going to give the truth, yes.

Q. And you had gone over these questions and answers before, hadn't you, before you testified today?

A. With whom, sir?

Q. With your lawyer.

A. I have gone over everything with my lawyer. I've told him everything, sir.

Q. Mr. Rugendorf, you stated that you offered to take a lie detector test at the FBI office in front of Agents Lee and Grundler, is that correct?

A. I did, sir.

Q. And you stated again here from the stand that you are willing to take a lie detector test right now.

A. Right this minute.

Q. Are you willing to take a lie detector test in this case right now—

Mr. Echeles: We are willing to take a lie-detector test—

By Mr. Berg:

Q. Right now—

The Court: Objection sus- —

327 Mr. Echeles: We are willing. We are willing to take a lie detector test. He has now asked him if he

is willing to take a lie detector test, and we take him up on it, your Honor. We will take a lie detector test.

The Court: Just a minute. The question is an improper question. Lie detector tests are not evidence.

Mr. Berg: If counsel wishes to stipulate we will submit it to the jury on the basis of that lie detector test, but the Government makes this representation right now—

Mr. Echeles: We are willing—

The Witness: I will—

Mr. Echeles: Sam, take it easy.

The Court: Just a minute.

Mr. Echeles: We are willing—

The Court; Just a minute.

Mr. Echeles: —to take up—

The Court: Just a minute.

Mr. Echeles: —the challenge of the Government, your Honor.

328 The Court: Just a minute, just a minute.

Mr. Echeles: Yes, your Honor.

The Court: I said calm yourselves. If there is going to be anybody speaking loud it is going to be I.

What is the proposition? State it to me in audible terms so we can understand it rationally—

Mr. Echeles: My proposition, your Honor,—

The Court: Just a minute. One at a time.

Mr. Echeles: If the court please,—

The Court: Just a minute. I have called upon the district attorney.

What is your proposition, Mr. District Attorney?

Mr. Berg: My proposition, your Honor, is: The Government will gladly give the defendant a lie detector test if he will stipulate that the findings of that lie detector test will be submitted to the jury for the determina-

329 tion of whether the defendant is lying or not.

The Court: Now, does the defendant's counsel accept the offer?

Mr. Echeles: Do you accept the offer?

The Witness: I certainly do.

Mr. Echeles: We accept the offer, your Honor.

The Court: All right.

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330-333 *Redirect Examination.*

The defendant stated that he was brought before the United States Commissioner on March 23, 1962, the day after his arrest and he did not discuss the case with his lawyer. On April 20, 1962, the case was dismissed against him in the Commissioner's hearing and he thought he was free. It was not until he made his bond on his indictment that he came to the lawyer's office on June 4, 1962. It was then he told his lawyer what had happened. He then appeared before the trial judge on June 7, 1962, for his arraignment. He next discussed the case with his lawyer at his home on July 1, 1962.

334 Q. (By Mr. Echeles) At any time that you talked to me did I ever tell you what to say or suggest your answers?

A. No sir".

335 *Recross Examination.*

Q. (By Mr. Berg): And you studied those questions that are on that sheet of paper yesterday, didn't you, sir? And on Sunday, didn't you?

A. I am sorry, sir, I did not.

Q. You never read that sheet of paper—

A. I read something over there, but I didn't read no sheets of paper—

Mr. Berg: No questions.

Mr. Echees: I will submit to you that there are no questions on here. These are the notes taken."

336 *Redirect Examination.*

Q. (By Mr. Echeles) As a matter of fact, when Mr. Berg referred by pointing to pieces of paper I had in my hand, to questions I had in my hand a long foolscap white sheet of paper with some typewriting on it. When you read these, do you find any questions and answers on these sheets of papers?

A. No, sir.

Mr. Berg: We would be happy to stipulate it into evidence.

Mr. Echeles: We will get it in for you right away.

Mr. Berg: Thank you.

Mr. Echeles: We will accommodate you. I am checking it for spelling. Of course, we will be happy and privileged to receive your trial notes too.

If the court please, I would like the court reporter to mark this stapled group of white sheets of paper as Defendant's Exhibit 19 for identification.

(Said documents were marked Defendant's Exhibit 19 for identification.)

Mr. Berg: The Government has no objection to 337 that statement going into evidence.

The Court: For what purpose is it offered, so the jury will be fully informed?

Mr. Echeles: I have not offered them yet. I have not even identified them yet, but I will make the offer. It is offered to rebut the false insinuation made by the prosecutor when he pointed to the sheets of paper I was holding, that he was reading questions and answers from a sheet of paper, on which there are no questions.

Mr. Berg: Your Honor, I apologize—

Mr. Echeles: So they are going to be offered—

Mr. Berg: Apparently I was mistaken, that there weren't questions—

Mr. Echeles: So this is going to go in now, your Honor, because he is going to stipulate—

The Court: Wait a minute. I will say what goes in, your Honor.

Mr. Echeles: Excuse me, your Honor. I am go-
338 ing to offer it, your Honor, and the Government has stipulated that it may go in.

Mr. Berg: Absolutely.

Mr. Echeles: Finally I got a stipulation from them.

Mr. Berg: Absolutely.

The Court: All right. It is going in for the sole purpose of going to the question of whether or not there were questions and answers on there that the defendant might have read and considered, is that what it is offered for?

Mr. Echeles: Yes, your Honor.

The Court: And for no other purpose?

Mr. Echeles: Well, and to dispute the insinuation that the Government attorney has made.

Mr. Berg: Your Honor, I merely insinuated that he was reading a piece of paper over there. I presumed it was questions and answers. It was merely the answers.

• • •

339 The Court: The exhibit is in for a limited purpose, and that is whether or not the witness has seen that document in the form of questions and answers.

(Said exhibit, so offered and received in evidence, was marked Defendant's Exhibit 19.)

The Court: You may show it to the witness.

By Mr. Echeles:

Q. I show you a document, being stapled sheets of white paper with typewriting on it, marked Defendant's Exhibit 19, and ask you if that is the paper that Mr. Berg, the Assistant United States Attorney, referred to when he asked you whether or not you read that sheet of paper.

340 A. Yes, sir.

Q. Are there any questions and answers on that sheet of paper by which you could learn something or refresh yourself?

A. On here—

Q. This is simply a narrative, is it not, of my notes taken of an interview between myself and Belle Rugendorf, your wife, and myself and yourself, in my office, on 6:30 p.m. on June 4, 1962?

A. Yes, sir.

Mr. Echeles: I offer this into evidence and, if the court please, would the record note that the Government stipulated it may go into evidence?

The Court: For that purpose, that purpose of showing whether or not it was questions and answers. It may go in for that limited purpose.

342 It was stipulated that the defendant's car was stolen on March 22, 1962 and reported to the Chicago police.

345 (The following proceedings were had out of the presence and hearing of the jury:)

The Court: Let us find out who and when is going to conduct the lie test.

Mr. Echeles: Your Honor, the defendant would also like to know, and the defense counsel would like to know, so that these questions don't go off into the blue yonder, what the questions are going to be.

The Court: Wait a minute. If there is going to be a stipulation it will have to be the person who is designated to determine that. I am not going to determine it, nor no one else. We will select an appropriate person who will make the test.

Mr. Echeles: My suggestion is, and it is just a suggestion, that the court ought to select a person or company to give the test, not connected with the Government, that no government agency ought to do it.

The Court: Is it stipulated that both parties will
346 accept anyone that the court designates, and that the court itself will not make any attempt, as far as that is concerned, to tell them how to conduct the test, that it will be entirely up to the person or organization that is selected to make a test in their customary manner?

Mr. Berg: Your Honor, the Government will stipulate to any lie detector expert that the court sees fit to appoint in this matter.

Mr. Echeles: We will so stipulate, your Honor.

The Court: All right, it is so stipulated.

All right, gentlemen, will both of you make recommendations? I have no desire. Maybe you can agree upon one, and if you agree upon one that is the one I will designate.

Mr. Berg: Could I have one moment, if your Honor please? I am not an expert on lie detector matters.

The Court: Yes, yes. I don't want it to be left hanging in the air. I want a decision on it one way or the other.

Gentlemen, from my own experience, I would suggest, I believe it is, John C. Reid. I noted a number of instances where he has been called in. Is that agreeable to both parties?

347 Mr. Monaghan: If it please the court, if I may interject—

The Court: Yes.

Mr. Monaghan: I believe that an agreement has been reached on Professor Keeler's laboratory in LaGrange, of Northwestern University.

The Court: That would be just as good. I have used him in my own, that organization, in my own private practice twenty years ago. That is just as good. As a matter of fact, I was trying to think of the name, and Reid is one who is called, and Keeler is the other. That is agreeable.

Mr. Monaghan: Thank you.

The Court: All right. It is understood that the Keeler organization will be the one to give the test, and when shall it be given?

Mr. Berg: Well, it should be given as soon as possible, your Honor.

The Court: All right: We will do this then. We will give it Thursday afternoon as soon as the evidence is concluded here, and then we will go to the jury on Friday. Right?

Mr. Echeles: All right, your Honor.

Mr. Monaghan: Fine.

348 Mr. Echeles: That is a good suggestion, and that will give us some time on Thursday with your Honor to go over some instructions.

The Court: Yes. We will do it in that manner.

Mr. Monaghan: Your Honor, will we have the court's permission to contact Professor Keeler's laboratory and inform him of your order?

The Court: Both sides are directed to contact him.

Mr. Echeles: If the court please, for the defendant we should know the area of interrogation.

The Court: Contact him, ask him to come here and I will hold a hearing and we will arrive at that in discussion with him sometime on Thursday.

Mr. Monaghan: Fine.

Mr. Berg: And also we will have to have some kind of an agreement as to medication which can apparently upset the results of a lie detector test.

Mr. Echeles: I sort of resent that, Mr. Berg.

The Court: Come here Thursday morning and arrange for him to be here, and we will take care of that.

Mr. Monaghan: If it please the court, that had to
349 do with the fact that the defendant is a diabetic.

The Court: Yes.

Mr. Monaghan: That was the only inference intended by the Government at this time.

The Court: All right.

Mr. Echeles: I accept the correction.

The Court: Then Thursday morning, and we will agree on the scope.

Mr. Monaghan: Thank you, your Honor.

Mr. Echeles: Thank you very much.

And defense counsel, I am sure joined in by the Government, wish the court a happy holiday.

(Thereupon an adjournment was taken until Thursday, July 5, 1962, at 10:00 o'clock a.m.)

* * *

At the opening of the proceedings on July 5, 1962, the following occurred:

350 (The following proceedings were had in the presence and hearing of the jury:)

The Clerk: 62 CR 202, United States Of America versus Rugendorf, on trial.

The Court: There was an offer to take a lie test, and it was accepted by the Government, and temporarily I said, "All right, if you stipulate."

However, on my own motion and because that evidence is inadmissible, I am not going to permit it to be admitted.

It has never been done in my experience, even in a
351 civil case; and even though the parties may stipulate that something may be admitted to evidence, the final decision is my decision, and not their decision. They might stipulate that the Declaration of Independence might be read to you and would be appropriate evidence, theoretically. They might agree on it, but I would be the one to say it does not have anything to do with the case.

But I am refusing to permit the taking of and the admission as evidence the results of a lie test, for the reason that it has never yet either by statute or by rules of evidence, been considered or is it considered as competent evidnce. Certainly if the Government sought to introduce evidence of a lie-detector test it would be rejected and it would be highly prejudicial, and of course both parties know that, both sides know that this has never been admitted. So I am not going to make a guinea pig out of this particular case.

Experience has shown that the taking of lie tests is not infallible by any means. A highly emotional person might show up in response to the questions as being guilty
352 when he was not guilty. A very cool and collected person might be able to answer the questions without those little heartthrobs, extra heartthrobs, that this is based upon, and might be able to show himself not guilty when he was guilty.

And, certainly without any inference as to whether this defendant is or is not likely to be guilty, I am simply saying to you that it is not appropriate, I will not accept it, and that is that, and we will have no further reference to it, because it is not admissible either way. So we will have no further reference to lie tests in this matter, by either side.

Now you may proceed with further evidence.

Mr. Echeles: If the Court please, in that case the defendant rests.

353-354 ROBERT F. MONAGHAN testified for the Government in rebuttal as follows:

Direct Examination.

That he was an Assistant United States Attorney. He talked with Mrs. Samuel Rugendorf on March 23, 1962, in his office in the court building. His secretary was present part of the time and during his conversation other Assistant United States Attorneys, Mr. Svetina and Mr. Quan, came into the room, but left. During the conversation he did not state to Mrs. Rugendorf, "We know your husband didn't do it, we know that Leo did it." He did not state to her that, "You know that Leo did it, that he is a well known fence, that he fences for Condick, Schweihs and Panzica." Neither did he tell her, "Informants told us these furs were in your basement."

355-381 *Cross Examination.*

Mr. Monaghan testified he was attached to the case as a lawyer. At one time, when the jury was recessed he addressed the court in connection with selecting the organization to conduct the lie test. He further discussed the selection of the lie testing company with defense counsel. He was even in the case before the indictment was drawn up. He had asked the members of the FBI to pick up Mrs. Rugendorf and bring her down to his office. It was a day after the arrest of the defendant that he directed agents of the FBI to invite Mrs. Rugendorf to come to his office. The file in the case was in the hands of Mr. Quan and he had not seen the search warrant or the affidavit prior to his talking with Mrs. Rugendorf. Nobody advised

him or directed him to call Mrs. Rugendorf for an interview. He decided to call Mrs. Rugendorf himself. He knew that the furs had been recovered. He became aware that at the time the furs were recovered from the basement, Mrs. Rugendorf was present. He did not know whether he learned that information from a phone call from one of the FBI agents or whether Mr. Quan informed him, or someone else, that the furs had been recovered in the basement and that Mr. Rugendorf was in custody.

During the conversation with Mrs. Rugendorf she brought up the name Leo Rugendorf. He did ask Mrs. Rugendorf whether she had given her keys to anybody. It was during the conversation he had with her that she said something which led him to inquire about who had keys to her home. She told him that her son Jerome had a key and that her brother-in-law, Leo Rugendorf, also had a key. When he asked her who had keys and she gave him the names, he also asked her if she was suggesting that either one of those people, her son Jerry or her brother-in-law Leo put the furs in her basement and she said, "Oh, no." The entire conversation between him and Mrs. Rugendorf took fifteen or twenty minutes. No transcription or notes were made of the conversation he had with her. Although his secretary was present she was there doing only routine work while he talked to Mrs. Rugendorf.

Prior to the time he first spoke to Mrs. Rugendorf, he had knowledge from information he had received in the course of his duty, that Leo Rugendorf was engaged as a fence.

He did not read the search warrant or the affidavit in support of the search warrant before talking with Mrs. Rugendorf. Shown defendant's Exhibit 20 for identification the witness stated he saw page 1, or a copy of it and he has seen a copy of the affidavit.

372 "Q. And the blue page is a certification by the clerk of the District Court that the papers to which the blue paper is attached is a true and correct copy of what appears in the court file, isn't that so?

Mr. Berg: We will stipulate to that, your Honor.

Mr. Echeles: All right. Well, will you stipulate that this document may go into evidence?

The Court: Now, Counsel, you know that is not admissible into evidence.

Mr. Echeles: I am going to offer it, your Honor.

The Court: Well, then why ask a question of that kind?

Mr. Echeles: Because if he stipulates then there is no argument, your Honor.

The Court: All right, continue the trial."

381-383 *Redirect Examination.*

The witness stated that on March 23, he was busy preparing for another trial out of town.

384-388 AGENT MARLIN MOORE testified in rebuttal as follows:

Direct Examination.

That on March 22, 1962, at about 5:00 P.M. he served a search warrant on the premises at 3117 West Jarvis Avenue to Mrs. Belle Rugendorf and that she read the warrant. After she read the warrant she stated, "Sam and I just returned from a vacation; if there's anything stolen in the basement, we don't know anything about it, and if there is something stolen in there, Leo must have put it there."

When they located the furs in the closet Mrs. Rugendorf identified one of the furs, a Persian Lamb, and stated, "This is my fur."

Neither he or any agent in his presence told Mrs. Rugendorf, "We know that your husband Sam and you had been caused a lot of embarrassment by your brother-in-law Leo, and we know that Leo is getting you in trouble again."

When they discussed how the furs could have gotten in the closet in the basement, Mrs. Rugendorf said, "This looks like another instance where Leo has gotten Sam in trouble and caused us embarrassment."

The three white bags, Exhibits 82, 83 and 85 were not in the closet, but were found four or five feet out of the corner in the northeast corner on the floor of the recreation room. After they had taken the furs from the closet the witness asked Mrs. Rugendorf if they could use the bags to take the furs to the office and she replied, "Yes, they're not mine, I have never seen them before. Go ahead and take them."

Neither he or any agent in his presence told her, "Informants have told us that these furs were in your basement."

390 *Cross Examination by Mr. Echeles.*

"Q. I show you what have been marked Defendant's Exhibit 20, and ask you if that is a copy of this search warrant which you served upon Mrs Rugendorf?

A. Yes. The first page is the front, the second page is the back, of the same document.

Q. The second page is a return which you made after you searched the basement?

A. The back side of the same document.

Q. The back side?

A. Yes. There are not two separate documents. There was one document.

Q. And I show you pages 3 and 4 of this group of white sheets, and ask you if that is not an affidavit which you signed in support of your securing the search warrant?

A. Yes, it is.

Mr. Echeles: If the Court please, I offer Defendant's Exhibit 20 into evidence.

Mr. Berg: I object.

The Court: Objection sustained. Refused.

Mr. Echeles: No further questions.

The Court: It has nothing to do with the case what-
391 soever."

391-409 AGENT RICHARD LEE testified in rebuttal as follows:

Direct Examination.

That when he and Agent Grundler arrested Sam Rugendorf, he made a search of the premises at 3758 South Wallace Avenue, Chicago. They then took Mr. Rugendorf to the FBI Headquarters and the trip took approximately fifteen minutes. During the drive he did not ask the defendant where they could find Leo, nor did they direct the defendant to drive to Rugendorf Bros. Meat Market. Neither did he ask how many furs his wife had nor where she kept them. They did not drive round and round and round and they did not pound questions at him. When they took him to the FBI Headquarters they did not interrogate him for an hour and an hour and a half. During the time the defendant was being fingerprinted the defendant said that he was a sugar diabetic. The witness then asked him if he needed medication and food and the defendant declined both. The defendant said his diet consisted of Oranice, to be taken with his breakfast and his supper and that there was no particular eating schedule that he had. They offered the defendant Oranice, medication and food on four more occasions while in office. They asked him whether he wanted food and medication approximately every thirty minutes. The defendant declined on each occasion. When they drove the defendant from the FBI Headquarters to the Chicago Police Department, they drove by a drug store and the witness went to the drug store and obtained four Oranice tablets.

Following the photographing and fingerprinting of the defendant he was taken to another office and asked concerning his knowledge of the furs that were located at his residence. During the interview neither the witness nor anyone in his presence stated "We know your brother Leo put them there." Neither did anyone direct the defendant to find out where his brother Leo was; nor did anyone direct the defendant to call his brother Leo. The defendant had said that he knew nothing about the furs and knowing about how they got into his house. He stated that he had been on a vacation with his wife and that they left Chicago about February 18th. He said that on February 17th his brother Leo came to his store, asked for and obtained a key to his residence in order to take care of the mail and to look after the house in general. The defendant also said that son Jerome and a neighbor also had keys to the house. The defendant said it was inconceivable to him that his son or his neighbor could possibly have anything to do with the furs. "He said that the only explanation that he could offer was that his brother Leo must have put them there, since he had a key, and because Mr. Rugendorf was aware of his brother Leo's past criminal activities."

The defendant said that upon his return from his vacation about three weeks prior to the date of his arrest that Leo again came to his store and returned the key to his residence.

During the interrogation, "Mr. Rugendorf had indicated that it was his feeling that Leo must have put the furs in his home, and stated that he wanted to get in touch with his brother Leo." The defendant first called his brother's residence and then his sister's residence. A third call was made to a professional bondsman.

At no time did the witness nor any agent in his presence state, "We don't believe you don't know where your brother Leo is. We know you know where your brother Leo it." Nor did he say, "You can go home right now if you tell us Leo did it." Nor did anyone ask the defendant, "Will you swear on your mother's grave that you don't know anything about these stolen furs." Nor did the defendant state at any time during the interview, "I will take a lie detector test."

He arrested the defendant about 5:50 P.M. and started for FBI Headquarters at about 6:05, arriving there between 6:15 and 6:20. The defendant advised the witness that he was a diabetic at about 6:25 P.M. Every half hour until they left the FBI Headquarters at 8:50 P.M. the defendant was asked if he wanted medication and food. They left the FBI Headquarters to go to the Chicago Police Department lock up at 8:50 P.M. and arrived at 9:50 P.M. On this trip Mr. Rugendorf accepted medication and food. They stopped at the YMCA, where Mr. Rugendorf had something to eat.

410-428 *Cross Examination.*

Agent Lee testified he did not know who in the FBI office or in the United States Attorney's office directed him to arrest the defendant. He did not have an arrest warrant with him when he went to arrest the defendant. The witness knew he was going to testify in rebuttal two days prior. He refreshed himself by going over his notes of the events that occurred on March 22, 1962. He did not ask anyone in the two days how it was that he went out to arrest the defendant.

He was in a car near the Rugendorf Bros. at 2449 Wentworth Avenue when he received a radio call and went to Rugendorf Bros. to ask for Sam Rugendorf. He spoke to

some people in the store and they told him Sam did not work there, that Sam was no longer actively associated with that store. They gave the witness the approximate area, 38th and Wallace where Sam was. The defendant was found in a little grocery store at 38th and Wallace. That address was 13 blocks south and about 7 blocks to the west of Rugendorf Bros. When they drove from 38th and Wallace to 536 South Clark Street to FBI Headquarters they went on 38th Street to Wentworth Avenue, north on Wentworth to Cermak, Cermak to Clark Street and down Clark Street to the headquarters. When they went north on Wentworth Avenue they went by Rugendorf Bros. Meat Market. There were other ways to get to 511 South Clark Street than by going north on Wentworth Avenue. They could have gone north on Canal Street or could have gone north on Union Street to 26th Street.

Every time they asked the defendant if he wanted Oranice they made a log. Mr. Rugendorf was making no notes during the time he was talking to them, nor was he writing anything down.

429 Whereupon both sides rested.

430-432 Defendant moved for a directed verdict of acquittal; the court denied the motion.

434-510 Tendered instructions and discussion thereon.

511-566 Argument of counsel.

567-585 Instructions of the court.

586-588 Agreement that defense objections made during the discussion on the instructions stand as objections to the instructions as given.

588-589 The Government objected to Defendant's Exhibit 19 going to the jury. It was pointed out that the court had admitted defendant's Exhibit 19 into evidence and instructed the jury that all evidence that went in may be received and considered by the jury.

590 The court allowed the prosecutor's motion preventing Defendant's Exhibit 19, admitted into evidence, from going to the jury.

592-595 Verdict of the jury finding the defendant guilty as charged in the indictment.

596-598 Colloquy of counsel.

599 Certification by the court reporter.

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[fol. 69]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 13967

September Term 1962—April Session 1963

UNITED STATES OF AMERICA, Appellee,

v.

SAMUEL JOSEPH RUGENDORF, Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

OPINION—April 30, 1963

Before DUFFY and KNOCH, Circuit Judges, and MERCER, District Judge.

DUFFY, Circuit Judge. Defendant was tried before a jury and was convicted of receiving, concealing and storing goods, wares and merchandise of a value in excess of $5,000, knowing the same had been stolen and transported in interstate commerce in violation of Section 2315, Title 18, United States Code. The goods were identified in the indictment as 81 fur pieces which had been stolen in Shreveport, Louisiana and Mountain Brook, Alabama, and which had moved in interstate commerce from Shreveport and Mountain Brook to Chicago, Illinois.

On this appeal, defendant argues (1) the evidence was insufficient to sustain the verdict of guilty; (2) the trial court erred in overruling defendant's motion to suppress the evidence, and (3) the trial court erred in refusing to require the government to reveal the source of the information contained in the affidavit, pursuant to which a search warrant was issued.

Defendant and his wife owned and occupied a two-story [fol. 70] brick, single family dwelling in the City of Chicago. The basement was partitioned into two sections by a wall

running east and west. The rear or south part contained two smaller rooms, one of which was a laundry and furnace room, and the other a general storage room. In the northern section, there was a nicely finished recreation room. At the east wall of this room there was a business-type desk with a telephone. In the center of the room was a card table and sewing machine. There were closets built into the north wall. During the search, Agent McCormick opened the doors to these closets, and in the last one discovered 81 furs hanging on individual wire hangers which hangers were on a rod that extended the length of the closet. The labels had been torn out of the garments. There were, in fact, 82 fur pieces, but Mrs. Rugendorf, the wife of defendant, identified one of the fur pieces as belonging to her.

Defendant's wife testified that she and her husband left Chicago on the evening of February 17, 1962, for a vacation in Florida and Nassau; that they returned to Chicago on March 4, 1962; that during the period of their absence, her brother-in-law, Leo Rugendorf, her son, her sister-in-law and one Roskin all had keys to the house. She testified the defendant did not go into the basement between March 4, and March 22. The defendant gave similar testimony and in addition testified he had no occasion prior to February 17, 1962, to go to the basement or to look at the closets. There also was testimony that defendant's brother, Leo, was a well-known "fence."

There is no dispute that on March 22, 1962, agents of the Federal Bureau of Investigation found in the basement of defendant's home, the loot of two burglaries, one of which occurred at Shreveport, Louisiana, December 4 and 5, 1961, and one at Mountain Brook, Alabama, on February 10, 1962.

There were a number of conflicts in the evidence which the jury was entitled to and did resolve. To illustrate, defendant testified that before he left on his vacation, he gave the key to his house to his brother Leo and that the key had not been returned. Agent Lee testified that when defendant was arrested he stated that Leo came into defendant's place of business shortly after he had returned from Florida and returned the key to him.

The situation in the case at bar is somewhat similar to
1. 71] that in *United States* v. *Mann*, 7 Cir., 108 F. 2d 354,
, where he said: "Here, the jury rejected defendant's
fessions of innocence in the face of stubborn facts
inly pointing to his guilt."

Knowledge of the stolen character of the goods may be
ablished by circumstantial evidence. *United States* v.
Brien, 7 Cir., 174 F. 2d 341; *United States of America* v.
egrucci, 3 Cir., 258 F. 2d 70.

We hold that the evidence, viewed in the light most
orable to the government, clearly supports the convic-
n of the defendant.

Defendant argues that the affidavit which was the basis
he issuance of the search warrant was based on hearsay
ormation and therefore insufficient. Defendant relies
n *Jones* v. *United States*, 362 U. S. 257.

Agent Moore of the F. B. I. swore that an informer who
furnished reliable information in the past reported to
ant that he had seen 80 fur garments in defendant's
ement a few days previously, describing them as mink,
r and beaver jackets, with labels removed, and that the
ormant had been told the furs were stolen.

We think defendant's reliance upon *Jones* v. *United*
tes, supra, is misplaced. We quote the following from
opinion in that case (pages 270-271): " . . . In a doubt-
case, when the officer does not have clearly convincing
dence of the immediate need to search, it is most im-
tant that resort be had to a warrant, so that the evidence
he possession of the police may be weighed by an inde-
dent judicial officer, whose decision, not that of the
ce, may govern whether liberty or privacy is to be
aded.

We conclude therefore that hearsay may be the basis
a warrant. We cannot say that there was so little basis
accepting the hearsay here that the Commissioner acted
roperly . . . But there was substantial basis for him to
clude that narcoties were probably present in the apart-
t, and that is sufficient. . . . "

n *United States of America* v. *Eisner*, 6 Cir., 297 F. 2d
596, the Court, relying on the *Jones* case, upheld the
iciency of an affidavit which stated " 'Information has

been obtained by S. A. Clifford Anderson, F. B. I., Cincinnati, Ohio, which he believes to be reliable to the effect that Sam Eisner received furs which were a part of the [fol. 72] loot from the Davidson, Indiana Fur Co. in Ky., after they had been transported from Indianapolis, and had knowledge that they had been stolen.'" It will be noted that the affidavit in the case at bar is quite similar to that approved in the *Eisner* case.

We hold there was no abuse of discretion on the part of the Commissioner in issuing the search warrant. There was present a sufficient basis for the determination by the Commissioner of the existence of probable cause.

The remaining point raised by defendant as error is the refusal of the trial court to require the disclosure of the name of the informer. The defendant relies on *Roviaro* v. *United States*, 353 U. S. 53.

At the trial, when the prosecutor refused to disclose the name of the informer, he stated the ground of his objection was "because it would cause a possible murder." Involved here is what has often been termed the "informer's privilege." However, it is the privilege, if any, of the government to withhold the names of persons who have supplied information leading to the detection of crime and the apprehension of the criminal.

The Supreme Court, in the early case of *In re Quarles and Butler*, 158 U. S. 532, 535-536, stated: " . . . and such information, given by a private citizen, is a privileged and confidential communication, for which no action of libel or slander will lie, and the disclosure of which cannot be compelled without the assent of the government. . . . "

However, an exception to this rule was stated in *Roviaro* v. *United States*, 353 U. S. 53, 60-61. The Court there held that when the disclosure of the name of the informer is "relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." The Supreme Court further stated in *Roviaro* v. *United States, supra*, at page 62: "We believe that no fixed rule with respect to disclosure is justifiable. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. . . . "

In *Roviaro,* the informer was the only person, other than the defendant, who participated in the transaction charged in the indictment. He was the only witness other than the defendant who could have disclosed entrapment, if any.

[fol. 73] In *Jones* v. *United States of America,* DC Cir., 271 F. 2d 494, 496, fn. 3, cert. den. 362 U. S. 918, the Court had for decision the question of whether it was error to fail to disclose the name of the confidential informant, when it was his information, relayed through another agent, that was the basis of establishing probable cause. The Court there said that *Roviaro* was applicable only when the informer " *'helped to set up the commission of the crime and . . . was present at its occurrence.'* . . . (Emphasis added.)"

The Courts of Appeal of several Circuits have considered the reach of *Roviaro* but have, nevertheless, upheld the action of trial courts in refusing to compel the government to disclose the name of the confidential informant.

In *Miller* v. *United States of America,* 5 Cir. (1959), 273 F. 2d 279, cert. den. 362 U. S. 928, the trial court had refused to require the government to disclose the name of the informant who had furnished the information giving the officers probable cause to arrest without a warrant. The Court of Appeals discussed *Roviaro* and also *Gilmore* v. *United States of America,* 5 Cir., 256 F. 2d 565, and stated at page 281: "We think that the circumstances of this case differ crucially from those cases in which disclosure was required. We hold that it was not error to refuse to require the Government to divulge the identity of its source of information . . . We are not dealing with one who was an active participant in the crime . . . and one who would have been able to testify directly about the very transaction constituting the crime . . . We think all the evidence discloses is that the informer was an informer and nothing more."

In a recent case, the Fourth Circuit, in *United States of America* v. *Whiting,* 311 F. 2d 191 (1962), refused to compel the government to disclose the name of a confidential informant who had furnished information leading to the obtaining of a search warrant. The Court said at page 196: "In the present case, however, we have no such situation for, as the attorney for the defendants admitted, the names

of the informers were wanted in support of the effort to invalidate the search warrant and not to help the defendants in the presentation of their case."

[fol. 74] We hold it was not error for the trial court to refuse to compel the government to disclose the name of its confidential informant.

AFFIRMED.

[fol. 75]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before: Hon. F. Ryan Duffy, Circuit Judge, Hon. Win G. Knoch, Circuit Judge, Hon. Frederick O. Mercer, District Judge.

No. 13967

UNITED STATES OF AMERICA, Appellee,

vs.

SAMUEL JOSEPH RUGENDORF, Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

JUDGMENT—April 30, 1963

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, in accordance with the opinion of this Court filed this day.

[fol. 76]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before: Hon. F. Ryan Duffy, Circuit Judge.

[Title omitted]

ORDER CORRECTING TYPOGRAPHICAL ERROR IN TRANSCRIPT—
May 13, 1963

On consideration of the motion and affidavit of counsel for defendant-appellant,

It Is Hereby Ordered that the following correction of a typographical error as it appears on page 13 of the appendix be made in order to conform with the original transcript of proceedings as certified and filed in this Court, on page 15, so that the paragraph may then read:

> "Mr. Echeles: *Roviera* v. *United States,* which is cited by our Seventh Circuit as authority for this proposition, states that if the informants, if the names of the informants are necessary to a proper defense or a proper presentation of the defendant's case in attacking the search warrant, then in the interest of justice it must be given to the defendant. The government has no reason not to give it, said *Roviera,* and that is the controlling law."

[fol. 77]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before: Hon. F. Ryan Duffy, Circuit Judge, Hon. Win G. Knoch, Circuit Judge, Hon. Frederick O. Mercer, District Judge.

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—May 24, 1963

It Is Ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby Denied.

[fol. 78] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 79]

SUPREME COURT OF THE UNITED STATES

No. 223—October Term, 1963

SAMUEL JOSEPH RUGENDORF, Petitioner,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—October 14, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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